

WILLIAM M. TRASK,)
)
 Plaintiff)
)
 v.) Civil No. 98-0220-B
)
 GENERAL SIGNAL CORPORATION,)
 et al.,)
)
 Defendants)

Plaintiff brings this action under the Americans with Disabilities Act [“ADA”], 42 U.S.C. §§ 12101-12213, the Maine Human Rights Act [“MHRA”], 5 M.R.S.A. §§ 4551-5633, the Employment Retirement Income and Security Act [“ERISA”], 29 U.S.C. §§ 1001-1461, and state law. Specifically, he alleges that he was improperly denied benefits under a long-term disability plan administered by Defendant Liberty Mutual/Liberty Life Assurance Co. [“LIBERTY MUTUAL”] on behalf of Defendant General Signal Corporation [“GENERAL SIGNAL”], Plaintiff’s employer. In Count VIII, he alleges he was improperly denied short-term disability benefits. Defendants have moved to dismiss Plaintiff’s Complaint in its entirety pursuant to Federal Rule of Civil Procedure 12.

Factual Background

Plaintiff's Complaint alleges that he began working for General Signal on October 29, 1990. In about April 1995, Plaintiff's bipolar disorder caused him to be unable to continue working.

Pursuant to a long-term disability benefit plan administered for General Signal by Liberty Mutual, Plaintiff began receiving disability benefits in about October, 1995. In about October, 1997, Plaintiff's benefits ceased pursuant to a provision in the plan limiting benefits for a disability "due to a mental or nervous condition" to 24 months.

The Complaint alleges that long-term disability benefits for physical, rather than mental, disabilities continue until age 65 for individuals less than 60 years of age. There is no allegation regarding Plaintiff's age.

Discussion

Plaintiff alleges generally that the disability plan at issue discriminates against individuals deemed to have mental disabilities under the ADA and the MHRA by limiting their benefits to 24 months, while allowing benefits to continue for individuals with physical disabilities until age 65. Plaintiff further alleges Defendants violated ERISA by improperly characterizing his bipolar disorder as a "mental impairment" within the meaning of the plan, and by improperly denying him

short-term disability benefits. Finally, Plaintiff alleges Defendants violated the Maine Insurance Code, 24-A M.R.S.A. §§ 1-6226, and breached their contractual duties by engaging in such discriminatory conduct. In analyzing this Motion to Dismiss, Plaintiff's allegations are accepted as true, and all reasonable inferences are drawn in his favor. *Aybar v. Crispin-Reyes*, 118 F.3d 10, 13 (1st Cir. 1997).

1. Plaintiff's claims under the ADA and MHRA.

Defendants first assert that long-term disability plans that differentiate between mental and physical disabilities do not, as a matter of law, violate the ADA or the MHRA.¹ The Court agrees.

On March 3, 1999, approximately two weeks before Defendants filed this Motion to Dismiss, this Court entered an Order addressing the very issue raised by the Motion. *Connors v. Maine Med. Ctr.*, 42 F. Supp. 2d 34 (D. Me. 1999). In *Connors*, this Court joined those that have held that an insurance plan does not discriminate under the ADA simply because it provides different benefits for different disabilities. *Id.* at 54. This conclusion is in accord with the Supreme Court's ruling that distinguishing between types of disabilities in the provision of benefits does not violate the Rehabilitation Act. *Traynor v. Turnage*, 485 U.S. 535, 549 (1988). The

¹ The two statutes are analyzed in the same manner. *Soileau v. Guilford of Maine*, 105 F.3d 12, 14 (1st Cir. 1997). Accordingly, the Court will refer only to the ADA in the remaining discussion.

Court also found it to be in accord with the legislative history of the ADA and subsequent legislation. *Conners*, 42 F. Supp. 2d at 54.

In *Conners*, the Court specifically rejected the contrary holding set forth in *Lewis v. Aetna Life Ins.*, 982 F. Supp. 1158 (E.D. Va. 1997), cited by Plaintiff in his Memorandum in opposition to the Motion to Dismiss. The Court stated: “Although the *Lewis* court discussed the decisions by the [Third and Seventh Circuit Courts of Appeal], it did not, as it could not, adequately support its position with the ADA’s legislative history. The statute’s language, cited by *Lewis* as support for finding the distinction clearly laid out in the legislative history illusory, does not provide compelling evidence that the statute must be interpreted as the *Lewis* court contends.” *Conners*, 42 F. Supp. 2d at 55. Rather, the Court was persuaded that plans such as the one at issue are not discriminatory because “[a]ll employees – the perfectly healthy, the physically disabled, and the mentally disabled – had a plan that promised them long-term benefits from the onset of disability until age 65 if their problem was physical, and long-term benefits for two years if the problem was mental or nervous.” *Id.* at 53 (quoting *EEOC v. CNA Ins. Cos.*, 96 F.3d 1039, 1044 (7th Cir.

1996) (citation omitted)). For this reason, Plaintiff's claims in Counts I, II and III of the Complaint are properly dismissed.²

2. *Plaintiff's claims under ERISA.*

Plaintiff asserts four separate claims arising under ERISA. The first, in Count IV of the Complaint, alleges that he was wrongfully denied long-term disability benefits. The second, in Count V, alleges breach of fiduciary duty. The third, in Count VII, asserts a claim for interference with Plaintiff's ERISA rights. The fourth, in Count VIII, sets forth a claim for wrongful denial of short-term disability benefits. As to all claims, Defendants seek dismissal on the grounds that Plaintiff has not exhausted his administrative remedies, as required by 29 U.S.C. section 1133.

As a preliminary matter, the claims in Counts IV, V, and VII of Plaintiff's Amended Complaint are based solely on Defendants' provision of long-term disability benefits. The Court is satisfied that Plaintiff has exhausted his administrative remedies with respect to these claims, and further, that the claims are now moot. The record in this matter reflects a recent decision on the part of Defendant General Signal's successor-in-interest not to rely upon the "mental illness"

² In light of this conclusion, the Court need not address Defendants' alternative arguments regarding Plaintiff's ADA claims: that Count II should be dismissed because Defendants are not "public accommodations" within the meaning of Title III of the ADA; that Plaintiff is not a "qualified person with a disability;" that Defendant Liberty Mutual is not a "covered entity;" and that Defendants are in any event entitled to the protections of the safe harbor provision of the ADA.

exclusion in Plaintiff's case, and to reimburse him for benefits that would have been paid between October, 1997 and May, 1999. Def. Mtn. to Cont., docket no. 20. Plaintiff seeks no other equitable relief in these Counts, and the law is clear that there is no damage remedy available under ERISA. *Turner v. Fallon Community Health Plan*, 127 F.3d 196, 197-98 (1st Cir. 1997).

As to Plaintiff's claim for wrongful denial of short-term benefits, the record reveals Plaintiff's appeal is pending with General Signal's successor-in-interest. Accordingly, the Court need not linger on Plaintiff's assertion that the administrative process is futile, or the remedy inadequate. *See, Snow v. Borden, Inc.*, 802 F. Supp. 550, 557 (D. Me. 1992) (citations omitted) (applying these exceptions to the exhaustion requirement). Further, Plaintiff's argument that he is excused from exhaustion because of Defendants' failure to provide appropriate notice must fail for Plaintiff's inability to show that a "precisely correct form of notice would have made a difference." *Recupero v. New Eng. Tele. & Tele.*, 118 F.3d 820, 840 (1997). Plaintiff's administrative appeal should be permitted to run its course, and Plaintiff's claim in Count VIII of the Amended Complaint should be dismissed without prejudice as premature.

3. *Plaintiff's claim under State law.*

Plaintiff asserts a claim in Count VI of the Amended Complaint for a violation of the Maine Insurance Code, 24-A M.R.S.A. §§ 1-6226 and breach of contract. Defendants move to dismiss the Count on the grounds that the long-term disability plan is not “insurance,” and Defendants not “insurers,” within the meaning of the Code, and further for the reason that there is no private right of action under the Code. Defendants argue Plaintiff’s claim for breach of contract is preempted by ERISA. Plaintiff has not responded to these arguments in his objection to the Motion to Dismiss. Accordingly, Plaintiff has waived objection, and Count VI is properly dismissed. D. Me. R. 7(b).

Conclusion

For the foregoing reasons, I hereby recommend Defendants’ Motion to Dismiss Plaintiff’s Amended Complaint be GRANTED, and that all counts of the Amended Complaint be dismissed with prejudice except Count VIII, which should be dismissed without prejudice as premature.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which

de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on: August 13, 1999